UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KAYLA ORSELL,

Petitioner,

-against- 9:24-CV-1389 (LEK)

JOHNATHON SPYCHALSKI, *et al.*,

Respondents.

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

On November 13, 2024, Kayla Orsell filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Dkt. No. 1 ("Petition").[1] For the reasons that follow, the Petition is dismissed.

II. BACKGROUND

Petitioner challenges the constitutionality of a criminal action against her in Gloversville City Court. Pet. at 38–39.[2] Petitioner argues that she is entitled to federal habeas relief because (1) she was unlawfully arrested in violation of the Fourth Amendment, *id.* at 16; (2) she was detained without a preliminary hearing in violation of the Fourteenth Amendment, *id.* at 15; (3) her attorneys were constitutionally ineffective in violation of the Sixth Amendment, *id.*; and (4)

[1] In support of her pleading, Petitioner has sent the Court a document with exhibits, Dkt. No. 2, including four SIM cards, Dkt. No. 2-1. Petitioner is advised that the Court cannot view the contents of the SIM cards. Accordingly, Dkt. No. 2-1 will be stricken from the record. The Court asks the Clerk to return the SIM cards to Petitioner, via certified mail, at the address last provided.

[2] Citations to Petitioner's filing refer to the pagination generated by CM/ECF, the Court's electronic filing system.

her bail was excessive in violation of the Eighth Amendment, *id*. Petitioner requests immediate release, exoneration of her bail, and dismissal of her charges. *Id.* at 16, 58.

Petitioner contends that "[d]espite diligent efforts to seek redress through state channels, [she] has been unable to obtain adequate relief due to a lack of effective pretrial remedies for detainees in New York State." *Id*. at 39. Petitioner states that her attorneys have "refused to file any motions on her behalf." *Id.* at 40. Petitioner avers that "[t]heir refusal effectively barred Petitioner from accessing state court remedies to address the violations of her constitutional rights." *Id.* at 41. Further, Petitioner has filed complaints with the New York State Attorney General, the New York State Inspector General, the New York Civil Liberties Union, the United States Department of Justice, and the Federal Bureau of Investigation. *Id.* at 39–40. Petitioner concludes that she "has no other avenue to seek relief except through this federal habeas corpus petition." *Id.* at 41. Petitioner has not directly appealed her conviction or otherwise collaterally challenged it in state court. *See id.* at 40–41.

III. DISCUSSION

A. Petitioner Brings this Action Under the Wrong Statute.

Petitioner brings this action pursuant to 28 U.S.C. § 2241, which permits the federal courts to grant a writ of habeas corpus to a "prisoner . . . in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). However, Section 2241 "pertains to challenges to the execution of a *federal* sentence." *Doe v. Terrell*, No. 09-CV-5834, 2010 WL 743180, at *3 (S.D.N.Y. Feb. 25, 2010); *see also Cook v. N.Y. State Div. of Parole*, 321 F.3d 274, 278 (2d Cir. 2003). Since Petitioner is challenging an underlying *state* criminal action, relief is unavailable under Section 2241. *See Welch v. Mukasey*, 589 F. Supp. 2d 178, 179 (N.D.N.Y. 2008).

State prisoners may bring habeas corpus petitions under Section 2254, which governs petitions filed by "a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). "[I]f an application that should be brought under 28 U.S.C. § 2254 is mislabeled as a petition under [S]ection 2241, the district must treat it as a [S]ection 2254 application instead." *Cook*, 321 F.3d at 277 (citing *James v. Walsh*, 308 F.3d 162, 166 (2d Cir. 2002)). Accordingly, the Petition shall be treated as a habeas corpus petition brought pursuant to Section 2254.

B. Petitioner's Action is Dismissed for Failure to Exhaust.

Even under Section 2254, however, the Petition must be dismissed. An application for a writ of habeas corpus under Section 2254 cannot be granted unless "the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). The only exceptions to the exhaustion requirement are if "there is an absence of available State corrective process," or "circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(B).

Section 2254's exhaustion requirement requires both procedural exhaustion and substantive exhaustion. *Horton v. Ercole*, 557 F. Supp. 2d 308, 322 (N.D.N.Y. 2008). "Procedural exhaustion requires that a petitioner raise all claims in the state court prior to raising them in a habeas petition." *Id.* Substantive exhaustion requires that a petitioner "fairly present" any constitutional claims to the "appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim." *Baldwin v. Reese*, 541 U.S. 27, 29 (2004). In other words, Petitioner "must give the state courts

one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).

Here, Petitioner has filed no appeal or other collateral challenge to her conviction. *See* Pet. at 40–41. Consequently, the highest state court capable of reviewing Petitioner's claims of various constitutional errors has not yet had the opportunity to do so. Petitioner has made several complaints to state and federal agencies, *see* Pet. at 39–40, but these are not the types of state court challenges contemplated by Section 2254. *See O'Sullivan*, 526 U.S. at 845 (acknowledging that the exhaustion doctrine is required to give *state courts* the opportunity to resolve federal constitutional claims). Accordingly, Petitioner has not sufficiently exhausted the remedies available to her in state court.

Furthermore, there is no basis for the Court to excuse the exhaustion requirement under Section 2254(b)(1)(B). The Court cannot conclude that "there is an absence of available State corrective process," or that "circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(B). Specifically, there is no merit to Petitioner's claim that poor performance by her counsel gives her "no other avenue to seek relief except through this federal habeas corpus petition." Pet. at 41. Even litigants without lawyers are required to navigate the procedural requirements of Section 2254. *See Perry v. Sheahan*, No. 16-CV-517, 2016 WL 6093997, at *3 (W.D.N.Y. Oct. 19, 2016) ("Petitioner's frustration at his difficulty navigating the procedural requirements *pro se*, and at the time required to do so correctly, is understandable, but . . . . it cannot excuse his failure to exhaust under 28 U.S.C. § 2254."). Although Petitioner claims her attorneys refused to submit motions on her behalf, she does not mention any appeals in state court that they have refused to file. *See* Pet. at 40–41.

Accordingly, the Court finds in this case that the state corrective processes are neither unavailable nor ineffective such that it should excuse the exhaustion requirement.

Based on the foregoing, the Petition is premature and dismissed without prejudice. If Petitioner exhausts the remedies available in state court, she is permitted to file another federal habeas petition. *See Slack v. McDaniel*, 529 U.S. 473, 485–86 (2000). That habeas petition must be filed "within one year of the date the judgment of conviction becomes final." *Bethea v. Girdich*, 293 F.3d 577, 578 (2d Cir. 2002); 28 U.S.C. § 2244(d).

IV. CONCLUSION

Accordingly, it is hereby:

ORDERED that the Petition, Dkt. No. 1, is **DISMISSED without prejudice**; and it is further

ORDERED that no certificate of appealability ("COA") shall issue in this case because Petitioner has failed to make a "substantial showing of the denial of a constitutional right" pursuant to 28 U.S.C. § 2253(c)(2). Any further request for a COA must be addressed to the Court of Appeals (Fed. R. App. P. 22(b)); and it is further

ORDERED, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: November 27, 2024
Albany, New York

LAWRENCE E. KAHN
United States District Judge